

**REMARKS/ARGUMENTS**

Claims 1-54 remain pending in the application. Claims 6, 7, and 29 have been amended to correct minor informalities. Reconsideration of the pending claims in view of the remarks below is respectfully requested.

Turning to the specific objections and rejections:

**Claims Objection**

1. Claim 29 is objected to for including the word "includes" twice. The claim has been amended to strike the second occurrence of the word "includes". Therefore, Applicants submit that the objection has been addressed and respectfully request the Examiner to withdraw the present objection.

**Claims Rejections – 35 U.S.C. § 112**

2. Claims 6 and 7 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention. Specifically, the Examiner points out that claims 6 and 7 recite the limitation "method of claim 1 and 6" where claim 1 is not a method claim. Applicants have amended claims 6 and 7 to recite "The method acidified starch of claim 1..." which has antecedent basis in claim 1. Therefore, Applicants submit that the rejection to claims 6 and 7 has been addressed and respectfully request the Examiner to withdraw the present rejection.

Claim Rejections - 35 U.S.C. § 103

3. Claims 1-54 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Howard et al. (U.S. Pat. No. 5,332,587) (herein "Howard") in view of Denhartog et al. (U.S. Pat. No. 5,747,091) (herein "Denhartog").

The Examiner asserts that the combination of Howard and Denhartog teach each and every limitation of the claimed invention. The Examiner relies on Denhartog for disclosing the use of a high-intensity sweetener for providing sugar-free foods to consumers.<sup>1</sup> The Examiner relies on Howard for disclosing a food grade acid.<sup>2</sup>

Howard's invention requires "polymeric food-acceptable acids [having] a cellulosic or saccharide-derived backbone with pendent carboxyl groups."<sup>3</sup> In contrast, the present application teaches the use of food grade acids such as "lactic acid, citric acid, phosphoric acid, fumaric acid, malic acid, tartaric acid, acetic acid, [and] propionic acid."<sup>4</sup> As is appreciated by the skilled artesian, none of the food grade acids described by the present application are polymeric acids (i.e. acids made up of repeated units<sup>5</sup>). ***In fact, the use of polymeric acids in Howard teaches away from the claimed invention in the present application.*** At column 6, lines 55-65, Howard explains:

That the use of a polymeric food-acceptable acid enables pasta to be made shelf-stable, and have all the other attributes required of a premium pasta product, is **surprising** for a number of reasons. For example, previously proposed

<sup>1</sup> See page 3 of the OA mailed 1/10/2006

<sup>2</sup> See page 4 of the OA mailed 1/10/2006

<sup>3</sup> See column 6, lines 37-44 of Howard

<sup>4</sup> See page 2, lines 19-21 of the present application

<sup>5</sup> See Steadman's Medical Dictionary, 27<sup>th</sup> Edition

procedures which used an acid have all resulted in products which do not have all of the attributes required of a premium pasta product.

**One typical failing is that the acids used impart an unpalatable acid taste to the pasta. However, this failing is remedied by the present invention.** (emphasis added)

Thus, Howard would not incorporate a high-intensity sweetener into the dough because Howard claims that the unpalatable taste associated with the use of food-grade acids is remedied by the use of "polymeric food-acceptable acids [having] a cellulosic or saccharide-derived backbone with pendent carboxyl groups."<sup>6</sup>

The Examiner further indicates that Howard discloses the use of "phosphoric acid, fumaric acid, malic acid, lactic acid, citric acid, tartaric acid, acetic acid and propionic acid" at column 8 lines 30-34.<sup>7</sup> However, Howard only contemplates the use of these acids **in combination with a polymeric acid** as evidenced by Howard's statement, "In certain embodiments, combinations of 20-60 wt. % alginic acid and 40/80 wt. % malic acid are used,"<sup>8</sup> wherein alginic acid is a polymeric acid.

Therefore, because Howard does not contemplate or suggest the use of a high-intensity sweetener, but rather teaches away from the use of a high intensity sweetener there is no motivation to combine the cited references. As such, the rejection under 103(a) is improper and Applicants therefore respectfully request that the Examiner withdraw the rejection to claims 1-54.

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<sup>6</sup> See column 6, lines 55-65 of Howard

<sup>7</sup> See page 4 of the OA mailed 1/10/2006

<sup>8</sup> See column 8, lines 36-37 of Howard

**CONCLUSION**

By way of the remarks and amendment provided herein Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain any outstanding issues that require adverse action, it is respectfully requested that the Examiner telephone James Krueger at (312)577-7000 so that such issues may be resolved as expeditiously as possible.

The Commissioner is hereby authorized to charge any additional fees which may be required by Applicants to Deposit Account No. 06-1135.

Respectfully submitted,

**FITCH, EVEN, TABIN & FLANNERY**

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